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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Deployment of Wireline Services)	CC Docket Nos. 98-147/98-11,
Offering Advanced Telecommunications)	98-26, 98-32, 98-15, 98-78, 98-91,
Capability, <u>et al.</u>)	and CCB/CPD No. 98-15 RM 9244

OPPOSITION OF SPRINT CORPORATION

Sprint Corporation opposes the petitions for reconsideration, filed by SBC Communications, Inc., et al., and Bell Atlantic, of the August 7, 1998 Memorandum Opinion and Order in the above-captioned proceedings. The petitioners seek reconsideration of two issues: the determination that ILECs have an obligation to make "conditioned" xDSL-capable loops available as unbundled network elements, and the determination that §706 is not a grant of substantive forbearance authority. The latter issue needs no comment. The Commission more than adequately explained the basis for its conclusions, and nothing in either petition demonstrates that the Commission misinterpreted its powers under §706. Thus, the balance of this opposition will address only the ILECs' duty to provide conditioned loops.

SBC and Bell Atlantic argue that a conditioned loop is a superior-quality loop, and that the Eighth Circuit, in Iowa Utilities Bd. v. FCC, 120 F.3rd 753, 813 (8th Cir. 1997), ruled that it was beyond the Commission's authority to require ILECs to provide facilities or services whose quality is superior to the ILECs' own facilities. Thus, they

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claim, the Eighth Circuit's ruling precludes the Commission from requiring them to provide conditional loops.

As a threshold matter, both petitions are extremely vague as to the scope of their argument. For example, Bell Atlantic (at 3) merely requests clarification that the order only requires ILECs to make available to others "any conditioning that the local exchange carriers provide to themselves," while SBC (at 5) complains that the "conditioning obligations require incumbents to improve their facilities so that they can be used to provide services that the incumbents do not currently provide over those facilities." There can be no question that if ILECs provide conditioned loops to themselves or an affiliate, they must do so for other carriers as well. However, it is not clear whether these RBOCs are arguing that (1) they have an obligation to provide a conditioned loop as a UNE only if they themselves have conditioned that very same loop to provide their own advanced services to the customer on whose premises the loop terminates, or (2) they have no obligation to condition a particular loop if they do not themselves offer conditioned loops to any other customer they serve. The former view is so narrow as not to be taken seriously, and Sprint assumes that instead they are making the latter argument.

In any event, Sprint disagrees with the RBOCs' contention that loop-conditioning requirements run afoul of the Eighth Circuit's decision. Sprint concedes that the Eighth Circuit did strike down general rules requiring ILECs to offer facilities superior to those of the incumbent LEC, and does acknowledge that in the Local Competition Order, 11 FCC Red 15499, 15659 (n.680) (1996), the Commission stated that it was requiring the provision of conditioned loops to permit CLECs to provide digital service even when the

ILEC did not provide such service. However, Sprint believes that this issue was not squarely addressed in Iowa Utilities Board. No party directly challenged the Commission's inclusion of xDSL-capable loops within the definition of the loop element. The RBOCs' brief made only a passing reference to ¶382 of the Local Competition Order (which had defined the loop element to include conditioned loops) in its "superior quality" argument,¹ and there was no discussion in the Court's opinion as to the types of factual circumstances it would regard as involving superior quality interconnection or facilities. Instead, the Court merely found that the Commission can require "unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one," 120 F.3rd at 813 (emphasis in original), and acknowledged (*id.*, n.33) that ILECs nonetheless have a duty to make modifications to their facilities to accommodate interconnection or access to network elements. Here, the "conditioning" of a loop in order to make it xDSL-capable does not involve the construction of an "unbuilt superior" network by the ILECs. It merely involves maintenance work (*e.g.*, removing bridged taps or loading coils) on the existing copper network. Thus, conditioning a loop to make it xDSL-capable far more closely resembles a modification of existing facilities, which the Court conceded was necessary, than construction of an "unbuilt superior" network.

Furthermore, n.680 in the Local Competition Order missed the point. After noting in the text (at ¶314) that LECs have a duty to make available unbundled elements of higher quality than the LEC itself employs, the Commission stated in n.680 (emphasis added)

¹ See Brief for Petitioners Regional Bell Companies and GTE, November 18, 1996, at 15.

We require, for example, that incumbent LECs provide local loops conditioned to enable the provision of digital services ... even if the incumbent does not itself provide such digital service.

As can be seen from the above quote, the emphasis in n.680 was on the comparative services offered by the CLEC and the ILEC, not on the comparative quality of the underlying facilities. It does not automatically follow that superior-quality facilities are necessary in order to provide superior-quality services. Sprint does not believe that a conditioned loop is necessarily a superior facility. For example, a loop from which loading coils have been removed is likely to be a lower quality facility for providing conventional voice service than a loop with loading coils. Thus, despite what the Commission said in n.680, Sprint does not believe that by requiring ILECs to provide conditioned loops, the Commission is necessarily forcing them to construct the “unbuilt superior” network that was disallowed in Iowa Utilities Board.

Finally, the RBOC petitions are difficult to reconcile with their representations in their Section 706 forbearance filings. Bell Atlantic, in its May 6, 1998 Reply Comments in CC Docket No. 98-11, stated (at 26):

Bell Atlantic has committed to provide xDSL-conditioned unbundled loops to its competitors in the interconnection agreements and will do so just as it has provided ordinary unbundled loops to competitors.

SBC, in its June 9, 1998 petition in CC Docket No. 98-91 stated (at 18-19):

If loop is available but requires conditioning (i.e., removal of load coils, bridge tap, and/or repeater) to support ADSL, conditioning will be available as an option.

And in its July 1, 1998 Reply Comments, in that docket, SBC flatly denied (at 26) that it is seeking “relief from the obligation to provide ADSL-compatible loops... .” In short,

both carriers clearly have previously represented that they will, without qualification, provide conditioned loops. The fact that they are challenging their duty to do so at this point can only imply that they intend to renege on their prior commitment to make conditioned loops available.

In any event, as discussed above, Sprint believes that the Commission clearly can require ILECs to make conditioned loops available. Such activity merely constitutes modification of existing plant rather than the construction of a "yet unbuilt superior" network that was proscribed by the Eighth Circuit. Accordingly, Sprint urges the Commission to deny the petitions for reconsideration filed herein by Bell Atlantic and SBC.

Respectfully submitted,

SPRINT CORPORATION



Leon M. Kesterbaum

Jay C. Keithley

H. Richard Juhnke

1850 M Street, N.W., 11th Floor


Washington, D.C. 20036

(202) 857-1030

October 5, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 1998, a copy of the foregoing document were served by U.S. Mail, first class, postage prepaid to the parties on the attached service list:


Joan A. Hesler

ANTHONY C EPSTEIN
JENNER & BLOCK
601 THIRTEENTH STREET
12TH FLOOR SOUTH
WASHINGTON DC 20005

KEVIN SIEVERT
GLEN GROCHOWSKI
MCI COMMUNICATIONS
LOCAL NETWORK TECHNOLOGY
400 INTERNATIONAL PKWY
RICHARDSON TX 75081

W SCOTT MCCOLLOUGH
MCCOLLOUGH AND ASSOCIATES PC
1801 NORTH LAMAR STE 104
AUSTIN TX 78701

DANA FRIX
KEMAL M HAWA
SWIDLER & BERLIN CHTD
COUNSEL FOR HYPERION
TELECOMMUNICATIONS INC
3000 K STREET NW STE 300
WASHINGTON DC 20007-5116

RUSSELL M BLAU
SWIDLER & BERLIN CHTD
COUNSEL FOR KMC TELECOM INC
3000 K STREET NW STE 300
WASHINGTON DC 20007

STEVEN M HOFFER
COALITION REPRESENTING INTERNET
SERVICE PROVIDERS
95 MARINER GREEN DR
CORTE MADERA CA 94925

G RICHARD KLEIN
COMMISSIONER
INDIANA UTILITY REGULATORY COMMISSION
302 W WASHINGTON STE E-306
INDIANAPOLIS IN 46204

THOMAS M KOUTSKY
ASSISTANT GENERAL COUNSEL
COVAD COMMUNICATIONS COMPANY
6849 OLD DOMINION DRIVE SUITE 220
MCLEAN VA 22101

FRANK MICHAEL PANEK
AMERITECH
2000 W AMERITECH CENTER DRIVE
ROOM 4H84
HOFFMAN ESTATES IL 60196

LAWRENCE G MALONE
GENERAL COUNSEL
STATE OF NEW YORK DEPARTMENT OF
PUBLIC SERVICE
THREE EMPIRE STATE PLAZA
ALBANY NY 12223-1350

RODNEY L JOYCE
J THOMAS NOLAN
SHOOK HARDY & BACON
COUNSEL FOR NETWORK ACCESS SOLUTIONS
INC
801 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004-2615

NATIONAL ASSOCIATION OF DEVELOPMENT
ORGANIZATIONS
444 NORTH CAPITOL STREET NW STE 630
WASHINGTON DC 20001

SCOTT TRUMAN
EXECUTIVE DIRECTOR
UTAH RURAL DEVELOPMENT COUNCIL
ADMINISTRATION BUILDING 304
SOUTHERN UTAH UNIVERSITY
CEDAR CITY UT 84720

RONALD L PLESSER
PIPER & MARBURY LLP
COUNSEL FOR PSINET
1200 NINETEENTH ST NW
WASHINGTON DC 20036

THOMAS J DUNLEAVY
NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA
ALBANY NY 12223-1350

A DANIEL SCHEINMAN
LAURA K IPSEN
CISCO SYSTEMS INC
170 WEST TASMAN DRIVE
SAN JOSE CA 95134-1706

GERALD STEVENS-KITTNER
CAI WIRELESS SYSTEMS INC
2101 WILSON BOULEVARD STE 100
ARLINGTON VA 22201

JOHN WINDHAUSEN JR
GENERAL COUNSEL
COMPETITION POLICY INSTITUTE
1156 15TH ST NW STE 310
WASHINGTON DC 20005

WILLIAM J ROONEY JR
GLOBAL NAPS INC
TEN WINTHROP SQUARE
BOSTON MA 02110

RUSSELL STAIGER
BISMARK/MANDAN DEVELOPMENT ASSN
400 E BROADWAY AVE STE 417
BISMARK ND 58502

J JEFREY OXLEY
MINNESOTA DEPARTMENT OF PUBLIC
SERVICE
1200 NCL TOWER
445 MINNESOTA STREET
ST PAUL MN 55101-2130

JOSEPH K WITMER
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P O BOX 3265
COMMONWEALTH AVE & NORTH
ROOM 116
HARRISBURG PA 17105-3265

THOMAS HATCH
HOUSE OF REPRESENTATIVES
STATE OF UTAH
P O BOX 391
PANGUITCH UT 84759

ISSUE DYNAMICS INC
901 15TH STREET STE 230
WASHINGTON DC 20005

ECONOMIC STRATEGY INSTITUTE
1401 H STREET NW
SUITE 750
WASHINGTON DC 20005

ELLEN DEUTSCH
SENIOR COUNSEL
ELECTRIC LIGHTWAVE INC
8100 NE PARKWAY DRIVE
SUITE 200
VANCOUVER WA 98662

ELECTRIC LIGHTWAVE INC
LEGAL COUNSEL
4400 77TH AVE
VANCOUVER WA 98662

NATIONAL ASSOCIATION OF COMMUNITY
ACTION AGENCIES
1100 17TH ST NW STE 500
WASHINGTON DC 20036

GENE VUCKOVICH
EXECUTIVE DIRECTOR
MONTANA RURAL DEVELOPMENT PARTNER
115 E SEVENTH STREET SUITE 2A
ANACONDA MT 59711

JOEL BERNSTEIN
HALPRIN TEMPLE GOODMAN &
SUGRUE
COUNSEL FOR NEXT LEVEL COMMUNICATIONS
1100 NEW YORK AVE NW
SUITE 650 EAST
WASHINGTON DC 20005

C BENNETT LEWIS
EXECUTIVE DIRECTOR
AURORA CHAMBER OF COMMERCE
3131 SOUTH VAUGHNWAY STE 426
AURORA CO 80014

CHRISTOPHER J WHITE
DEPUTY ASSISTANT RATEPAYER ADVOCATE
THE STATE OF NEW JERSEY
DIVISION OF THE RATEPAYER ADVOCATE
31 CLINTON STREET 11 FLOOR
NEWARK NJ 07101

RANDALL B LOWE
PIPER & MARBURY LLP
COUNSEL FOR
TRANSWIRE COMMUNICATIONS LLC
1200 NINETEENTH ST NW
WASHINGTON DC

JOHN HANES
CHAIRMAN
HOUSE CORPORATION
WYOMING STATE LEGISLATURE
213 STATE CAPITOL
CHEYENNE WY 82008

THOMAS GANN
MANAGER FEDERAL AFFAIRS
SUN MICROSYSTEMS INC
1300 I STREET NW STE 420 EAST
WASHINGTON DC 20005

CHERIE R KISER
MICHAEL B BRESSMAN
MINTZ LEVIN COHN FERRIS
GLOVSKY AND POPEO PC
701 PENNSYLVANIA AVE NW
STE 900
WASHINGTON DC 20004

ROBERT D BOYSEH
PRESIDENT
LARAMIE ECONOMIC DEVELOPMENT CORP
1482 COMMERCE DRIVE STE A
LARAMIE WY 82070

JACK CREWS
CHEYENNE LEADS
1720 CAREY AVENUE STE 401
P O BOX 1045
CHEYENNE WY 82003-1045

KAREN PELTZ STRAUSS
LEGAL COUNSEL FOR TELECOMMUNICATION
POLICY
NATIONAL ASSOCIATION FOR THE DEAF
814 THAYER AVE
SILVER SPRING MD 20910-4500

JEFFREY A CAMPBELL
STACEY STERN ALBERT
COMPAQ COMPUTER CORPORATION
1300 I STREET NW
WASHINGTON DC 20005

MARK J TAUBER
TERESA S WERNER
PIPER & MARBURY LLP
COUNSEL FOR OMNIPPOINT COMMUNICATIONS
INC
1200 19TH ST NW SEVENTH FLOOR
WASHINGTON DC 20036

MARK C ROSENBLUM
AVA B KLEINMAN
AT&T CORP
295 NORTH MAPLE AVENUE
ROOM 3252J1
BASKING RIDGE NJ 07920

STEVEN GOROSH
VICE PRESIDENT & GENERAL COUNSEL
NORTHPOINT COMMUNICATIONS INC
222 SUTTER STREET
SAN FRANCISCO CA 94108

JEFFREY BLUMENFELD
CHRISTY KUNIN
BLUMENFELD & COHEN
COUNSEL FOR RHYTHMS NETCONNECTIONS
INC
1615 M STREET NW STE 700
WASHINGTON DC 20036

CEDAR CITY/IRON COUNTY ECONOMIC DEV
110 N MAIN ST5REET
P O BOX 249
CEDAR CITY UTAH 84720

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO
HOWARD J SYMONS
MICHELLE M MUNDT
COUNSEL FOR NEXTLINK COMMUNICATIONS INC
701 PENNSYLVANIA AVENUE NW
SUITE 900
WASHINGTON DC 20004

NEXTLINK COMMUNICATIONS INC
R GERARD SALEMME
SENIOR VICE PRESIDENT EXTERNAL AFFAIRS /
INDUSTRY RELATIONS
DANIEL GONZALEZ
DIRECTOR REGULATORY AFFAIRS
1730 RHODE ISLAND AVE NW
SUITE 1000
WASHINGTON DC 20036

GORDON M AMBACH
EXECUTIVE DIRECTOR
COUNCIL OF CHIEF STATE SCHOOL OFFICERS
ONE MASSACHUSETTS AVE NW
SUITE 700
WASHINGTON DC

HALPRIN TEMPLE GOODMAN & SUGRUE
THOMAS J SUGRUE
COUNSEL FOR NYSERNET
1100 NEW YORK AVENUE NW
SUITE 650 EAST
WASHINGTON DC 20005

**NYSERNET INC
DR DAVID LYTEL
125 ELWOOD DAVIS ROAD
SYRACUSE NY 13212**

**JONATHAN E CANIS
ERIN M REILLY
KELLEY DRYE & WARREN LLP
COUNSEL FOR INTERMEDIA
COMMUNICATIONS INC
1200 19TH ST NW STE 500
WASHINGTON DC 20554**

**COLE RAYWID & BRAVERMAN LLP
CHRISTOPHER W SAVAGE
JAMES F IRELAND
KARLYN D STANLEY
1919 PENNSYLVANIA AVENUE NW
SUITE 200
WASHINGTON DC 20006**

**JOSEPH W WAZ JR
VICE PRESIDENT EXTERNAL AFFAIRS &
PUBLIC POLICY COUNSEL
COMCAST CORPORATION
1500 MARKET STREET
PHILADELPHIA PA 19102**

**JAMES R COLTHARP
SENIOR DIRECTOR PUBLIC POLICY
COMCAST CORPORATION
1317 F STREET NW
WASHINGTON DC 20004**

**CHARLES D GRAY
GENERAL COUNSEL
NARUC
1100 PENNSYLVANIA AVE STE 608
P O BOX 684
WASHINGTON DC 20044**

**ALBERT H KRAMER
MICHAEL CAROWITZ
DICKSTEIN SHAPIRO MORIN &
OSHINSKY LLP
COUNSEL FOR ICG TELECOM GROUP INC
2101 L STREET NW
WASHINGTON DC 20037-1526**

**D ROBERT WEBSTER
BAMBERGER & FEIBLEMAN
COUNSEL FOR THE NATIONAL BLACK
CHAMBER OF COMMERCE
54 MONUMENT CIRCLE STE 600
INDIANAPOLIS IN 46204**

**CHAPIN BURKS
PRESIDENT
ST GEORGE AREA CHAMBER OF COMMERCE
97 EAST ST GEORGE BLVD
ST GEORGE UTAH 84770**

**NATIONAL ASSOCIATION OF
DEVELOPMENT ORGANIZATIONS
444 NORTH CAPITOL ST NW STE 630
WASHINGTON DC 20001**

**WORLD INSTITUTE ON DISABILITY
510 16TH ST STE 100
OAKLAND CA 94612**

**PETER ROHRBACH
LINDA L OLIVER
DAVID L SIERADZKI
HOGAN & HARTSON LLP
COUNSEL FOR LCI INTERNATIONAL TELECOM
CORP
COLUMBIA SQUARE
555 THIRTEENTH ST NW
WASHINGTON DC 20004**

**UNITED STATES TELEPHONE ASSOCIATION
LINDA KENT
KEITH TOWNSEND
1401 H STREET NW STE 600
WASHINGTON DC 20005**

**TERRENCE K FERGUSON
SR VP AND GENERAL COUNSEL
LEVEL 3 COMMUNICATIONS INC
3555 FARNAM STREET
OMAHA NE 68131**

**GAIL L POLIVY
GTE SERVICE CORPORATION
1850 M STREET NW
SUITE 1200
WASHINGTON DC 20036**

**KEVIN TIMPANE
VICE PRESIDENT PUBLIC POLICY
FIRSTWORLD COMMUNICATIONS INC
9333 GENESSEE AVENUE STE 200
SAN DIEGO CA 92121**

**COLLEEN BOOTHBY
LEVIN BLASZAK BLOCK AND
BOOTHBY LLP
COUNSEL FOR THE INTERNET ACCESS
COALITION
2001 L STREET NW STE 900
WASHINGTON DC 20036**

**DAVID N PORTER
WORLD COM INC
1120 CONNECTICUT AVE NW
STE 400
WASHINGTON DC 20036**

**CHRISTOPHER W SAVAGE
JAMES F IRELAND
COLE RAYWID & BRAVERMAN LLP
COUNSEL FOR APK NET LTD CYBER WARRIOR
HELICON ONLINE INFORAMP INTERNET
CONNECT COMPANY MTP LLC DBA JAVANET
& PROAXIS COMMUNICATIONS
1919 PENNSYLVANIA AVE NW STE 200
WASHINGTON DC 20006**

**JENNER & BLOCK
ANTHONY C EPSTEIN
COUNSEL FOR MCI TELECOMM CORP
601 THIRTEENTH STREET NW
WASHINGTON DC 20005**

**JONATHAN JACOB NADLER
SQUIRE SANDERS & DEMSEY
COUNSEL FOR INFORMATION TECHNOLOGY
ASSOCIATION OF AMERICA
1201 PENNSYLVANIA AVE NW
BOX 407
WASHINGTON DC 20044**

**HENRY GELLER
ALLIANCE FOR PUBLIC TECHNOLOGY
901 15TH ST NW STE 230
WASHINGTON DC 20005**

**NATIONAL ASSOCIATION OF COMMISSIONS
FOR WOMEN
1828 L STREET NW STE 250
WASHINGTON DC 20036**

**KECIA BONEY
DALE DIXON
LISA SMITH
MCI TELECOMMUNICATIONS CORPORATION
1801 PENNSYLVANIA AVE NW
WASHINGTON DC 20006**

**ROBERT W MCCAUSLAND
VICE PRESIDENT REGULATORY AND
INTERCONNECTION ALLEGIANCE TELECOM
1950 STEMMONS FREEWAY STE 3026
DALLAS TX 75207-3118**

**William T. Lake
John H. Harwood
Lynn R. Charytan
Jonathan J. Frankel
Matthew A. Brill
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20036**

**UNITED HOMEOWNERS ASSOCIATION
1511 K STREET NW
WASHINGTON DC 20005**

**NATIONAL HISPANIC COUNCIL ON AGING
2713 ONTARIO ST NW
WASHINGTON DC 20009**

**D ROBERT WEBSTER
BAMBERGER & FEIBLEMAN
COUNSEL FOR THE NATIONAL BLACK
CHAMBER OF COMMERCE
54 MONUMENT CIRCLE STE 600
INDIANAPOLIS IN 46204**

**RICHARD TARANTO
FARR & TARANTO
BELL ATLANTIC
1850 M STREET NW
SUITE 1000
WASHINGTON DC 20036**

**ROBERT B MCKENNA
JEFFRY A BRUEGGEMAN
U S WEST INC
1020 19TH ST NW
WASHINGTON DC 20036**

**PIPER & MARBURY LLP
RONALD L PLESSER
MARK J O'CONNOR
STUART P INGIS
COUNSEL FOR COMMERCIAL INTERNET
EXCHANGE ASSOCIATION
SEVENTH FLOOR
1200 NINETEENTH ST NW
WASHINGTON DC 20036**

**BARTLETT L THOMAS
JAMES J VALENTINO
MINTZ LEVIN COHN FERRIS
GLOVSKY AND POPEO
COUNSEL FOR XCOM TECHNOLOGIES INC
701 PENNSYLVANIA AVE NW STE 900
WASHINGTON DC 20004-2608**

**JAMES R YOUNG
EDWARD D YOUNG III
MICHAEL E GLOVER
BELL ATLANTIC
1320 NORTH COURT HOUSE ROAD
8TH FLOOR
ARLINGTON VA 22201**

**JOHN T LENAHA
CHRISTOPHER HEIMANN
FRANK MICHAEL PANEK
GARY PHILLIPS
AMERITECH
2000 WEST AMERITECH CENTER DR
ROOM 4H84
HOFFMAN ESTATES IL 60196-1025**

**CHAPIN BURKS
PRESIDENT
ST GEORGE AREA CHAMBER OF COMMERCE
97 EAST ST GEORGE BLVD
ST GEORGE UTAH 84770**

**CHARLES C HUNTER
HUNTER COMMUNICATIONS LAW GROUP
COUNSEL FOR TELECOMMUNICATIONS
RESELLERS ASSOCIATION
1620 I STREET NW STE 701
WASHINGTON DC 20006**

**JONATHAN E CANIS
KELLEY DRYE & WARREN LLP
COUNSEL FOR INTERMEDIA
COMMUNICATIONS INC & EXCEL
TELECOMMUNICATIONS INC
1200 19TH ST NW STE 500
WASHINGTON DC 20544**

**L MARIE GUILLORY
NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION
2626 PENNSYLVANIA AVE NW
WASHINGTON DC 20037**

**CHRISTOPHER W SAVAGE
COLE RAYWID & BRAVERMAN
COUNSEL FOR COMCAST CORPORATION
1919 PENNSYLVANIA AVE NW STE 200
WASHINGTON DC 20006**

**CHERYL L PARRINO
CHAIRMAN
PUBLIC SERVICE COMMISSION OF WISCONSIN
P O BOX 7854
MADISON WI 53707-7854**

**PETER ARTH JR
WILLIAM N FOLEY
MARY MACK ADU
505 VAN NESS AVE
SAN FRANCISCO CA 94102**

**DURWOOD D. DUPRE
DARRYL W. HOWARD
SOUTHWESTERN BELL TELEPHONE
ONE BELL CENTER, ROOM 3528
ST. LOUIS, MO 63101**

**THOMPSON COBURN
STEPHEN B. HIGGINS
JAMES W. ERWIN
SOUTHWESTERN BELL TELEPHONE
ONE MERCANTILE CENTER
SUITE 3300
ST. LOUIS, MO 63101**

**RICHARD D MARKS ESQ
VINSON & ELKINS LLP
COUNSEL FOR COMPUTER &
COMMUNICATIONS INDUSTRY
ASSOCIATION
1455 PENNSYLVANIA AVE NW
SUITE 700
WASHINGTON DC 20004-1008**

**M ROBERT SUTHERLAND
BELLSOUTH CORPORATION
1155 PEACHTREE ST NE
ATLANTA GA 30309-3610**

**J MANNING LEE
VICE PRESIDENT REGULATORY AFFAIRS
TELEPORT COMMUNICATIONS GROUP INC
TWO TELEPORT DRIVE
STATEN ISLAND NY 10311**

**GEORGE VRADENBURG III
AMERICA ONLINE INC
1101 CONNECTICUT AVE NW
STE 400
WASHINGTON DC 20036**

**GENEVIEVE MORELLI
EXECUTIVE VICE PRESIDENT
AND GENERAL COUNSEL
COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION
1900 M STREET NW SUITE 800
WASHINGTON DC 20036**

**CATHERINE R SLOAN
RICHARD L FRUCHTERMAN III
RICHARD S WHITT
WORLD COM INC
1120 CONNECTICUT AVE NW
SUITE 400
WASHINGTON DC 20036**

**BRAD E MUTSCHELKNAUS
MARIEANN Z MACHIDA
KELLEY DRYE & WARREN LLP
1200 19TH STREET NW
SUITE 500
WASHINGTON DC 20036**

**DAVID J NEWBURGER
NEWBURGER & VOSSMEYER
COUNSEL FOR CAMPAIGN FOR
TELECOMMUNICATIONS ACCESS
ONE METROPOLITAN SQUARE
SUITE 2400
ST LOUIS MO 63102**

**BARBARA A DOOLEY
EXECUTIVE DIRECTOR
COMMERCIAL INTERNET eXchange ASSOC
1041 STERLING ROAD
SUITE 104A
HERNDON VA 20170**

**DAVID W ZEISIGER
DONN T WONNELL
INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE
1300 CONNECTICUT AVE NW STE 600
WASHINGTON DC 20036**

**CINDY Z SCHONHAUT
SENIOR VICE PRESIDENT OF GOVERNMENT
AFFAIRS & EXTERNAL AFFAIRS
ICG COMMUNICATIONS INC
161 INVERNESS DRIVE
ENGLEWOOD CO 80112**